REMARKS / ARGUMENTS

Claims 1-32 are pending in the instant application. Claims 1, 11 and 21 are independent. Claims 2-10, 12-20 and 22-30 depend from independent claims 1, 11 and 21, respectively. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-7, 9, 11-17, 19, 21-27, 29 and 31-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 7,042,867 ("Whitehill"), in view of USPP 2003/0112182 ("Bajikar"). Claims 8, 18 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Whitehill in view of Bajikar and further in view of USP 7,433,691 ("White"). Claims 10, 20 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Whitehill in view of Bajikar and further in view of USP 7,200,673 ("Augart"). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

REJECTION UNDER 35 U.S.C. § 103

The MPEP states the following regarding the requirements for establishing a *prima facie* case of obviousness:

> The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection

under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), and

KSR International Co. v. Teleflex Inc., 82 USPQ2d at 1396 (quoting Federal Circuit

statement with approval). "The mere fact that references can be combined or modified

does not render the resultant combination obvious unless the results would have been

predictable to one of ordinary skill in the art" *See id.,* § 2143.01. Furthermore, in order

to render the claims obvious, the asserted prior art combination must **teach or suggest**

each and <u>every</u> claim feature. *See In re Royka*, 490 F.2d 981 (CCPA 1974) (to

establish *prima facie* obviousness of a claimed invention, all the claim features must be

taught or suggested by the prior art)[1]; *see also In re Wada and Murphy*, Appeal 2007-

3733, citing *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (A proper obviousness

determination requires that an Examiner make "a searching comparison of the claimed

invention **– including all its limitations –** with the teaching of the prior art.")

If a *prima facie* case of obviousness is not established, the Applicant has no

obligation to submit evidence of nonobviousness:

> The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

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[1] Emphasis added except where noted otherwise.

See MPEP at § 2142.

With these principles in mind, the Applicants now turn to the claim rejections in particular.

I. The Proposed Combination of Whitehill and Bajikar Does Not Render Claims 1-7, 9, 11-17, 19, 21-27, 29 and 31-32 Unpatentable

A. Independent Claims 1, 11 and 21

1. The Whitehill Reference is Deficient. The Examiner Has Not Established The Propriety of Combining Whitehill and Bajikar

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Whitehill and Bajikar does not disclose or suggest at least the limitation of "determining, outside of said network device, configuration information for said network device, said configuration information corresponding to said determined location of said network device," as recited by the Applicant in independent claim 1.

The Office Action states the following:

Regarding claim 1, Whitehill discloses a method for providing location based configuration in a hybrid wired/wireless network, the method comprising:

- identifying a location of a network device (determining the geographic location of user nodes, see col. 3, lns. 29-43) within the hybrid wired/ wireless network (fig. 1), the network device being movable within the hybrid wired/wireless network (mobile nodes, see 103 & 102 fig.1);

- determining, outside of the network device, accessing configuration of the network device (determining accessing of the mobile node at Access Point or AAA server, see fig. 7), the accessing configuration corresponding to the determined location of the network device (the accessing configuration is related with the location of the mobile node, see fig. 7); and

- communicating the determined accessing of the network device for providing location based configuration of the network device (messages sent to the mobile node, see fig. 7).

See Office Action at page 3. The Appellant disagrees with the Examiner's assessment of Whitehill. Whitehill discloses a system and method for providing security to a wireless network by using a mobile node's location as a parameter for deciding if access is to be given to the node. More specifically, an 802.11 authentication server (e.g., AAA 105 in Fig. 1) can request a wireless router (e.g., 102-1 in Fig. 1) or access point (e.g., 101-1 in Fig. 1) to take time of flight measurements and report either the time of flight or the calculated distance for a remote node (e.g., 103-1 in Fig. 1). The authentication server can then determine if the location of the wireless user/node is within a defined space, such as a building outline, and the authentication server may reject users that are outside the perimeter. (*See* Whitehill, Figs. 3-6 and 5:59-6:49.)

Whitehill, at Fig. 7, simply discloses an exemplary flow of messages between devices during the authorization process. More specifically, as part of the authentication process, the AAA server 105 sends a message to the access point 101 requesting the range information of the mobile node 103-2, such as the location of the wireless router 102-1, and the distance between the wireless router and the mobile

device 103-2. The access point 101 receives the message from the AAA server and sends a request to the wireless router 102-1 to determine the distance between the mobile device 103-2 and the wireless router 102-1. The wireless router 102-1 executes a series of measurements, such as time of flight measurements, and determines the requested distance information, which is then sent to the AAA server 105 via the access point 101. **The AAA server then calculates a position for the mobile node 103-2 and determines if the mobile node is within a secure zone 118-1, that is, within a zone in which network access by mobile nodes is allowed. In this regard, even though Whitehill determines the location of the mobile node 103-2, <u>such location information is simply used to grant or deny access to the wireless network based on the determined location information</u>. <u>The location information is not used for purposes of device configuration</u>. In fact, Whitehill does not disclose that any location-based configuration information is being communicated to the mobile node 103-2 after its location is determined.**

In sum, Whitehill does not disclose or suggest that location information is for purposes of device configuration. Rather, Whitehill merely uses the determined location information to grant or deny access to the wireless network. In fact, Whitehill does not disclose that any location-based configuration information is being communicated to the mobile node 103-2 after its location is determined.

Furthermore, the Examiner admits that Whitehill fails to disclose at least the

limitation of "configuration information for the network device." (*See* Office Action, p. 3).

More specifically, the Examiner states:

> Whitehill discloses the accessing of network device, but does not
> explicitly disclose "configuration information for the network device".

The Examiner then relies on Bajikar in an attempt to overcome these deficiencies

of Whitehill:

> However, Bajikar discloses "configuration information for the network
> device (each security zone is determined in accordance with the current
> location or position of mobile device and then ... a screen saver locks
> and reauthentication as sharing rules, automatic roaming, i.e., channel
> accessibility, etc., see ¶ 16).

(*See id.*, p. 3). Putting aside for the moment whether or not this is an accurate

assessment of Bajikar, in proposing to combine Bajikar and Whitehill, the Examiner fails

to provide "articulated reasoning with some rationale underpinning to support the legal

conclusion of obviousness" in the detailed manner described in KSR.

Specifically, the Examiner is required to provide "some articulated reasoning with

some rationale underpinning to support the legal conclusion of obviousness*.*" *See KSR*

International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007) quoting *In re Kahn*, 441

F.2d 997,988 (CA Fed. 2006). Put another way, the Examiner should "identify a reason

that would have prompted a person of ordinary skill in the relevant field to combine the

elements in the way the claimed new invention does." *KSR*, 127 S. Ct. at 1741. The

Examiner should make "explicit" this rationale of "the apparent reason to combine the

known elements in the fashion claimed," including a detailed explanation of "the effects

of demands known to the design community or present in the marketplace" and "the

background knowledge possessed by a person having ordinary skill in the art." *Id.*

The Examiner attempts to support the combination of Bajikar and Whitehill as

follows:

> Therefore, it would have been obvious to one of ordinary skill in the art at
> the time of applicant's invention to apply the method of determining
> configuration information for the network device as taught by Bajikar into
> the system of Whitehill, so that it provides a way of automatic roaming,
> external access request, etc. based on the location information (Bajikar,
> see ¶ 16).

(*See id.*, p. 3). This unsupported, conclusory allegation does not provide

"articulated reasoning with some rationale underpinning to support the legal conclusion

of obviousness" in the detailed manner described in KSR. Instead, the Office Action

appears to be proposing the combination based solely on improper hindsight. The

generic benefit of "provides a way of automatic roaming, external access request, etc.

based on the location information" is not an articulated reasoning with a rational

underpinning, as required by the MPEP. As such, the rejections based on the proposed

combination of Bajikar and Whitehill are improper and should be withdrawn.

2. Even If Combined, Whitehill and Bajikar Fail To Disclose Or Suggest All Of The Elements Of Claims 1, 11 and 21

Even if Whitehill and Bajikar are combined in the manner suggested by the Office

Action, claims 1, 11 and 21 are still patentable because the resulting combination does

not disclose or suggest at least the limitation of "determining, outside of said network

device, configuration information for said network device, said configuration information

corresponding to said determined location of said network device," as recited by the

Applicant in independent claim 1.

> The Office Action states the following with regard to the teachings of Whitehill:
>
> Whitehill discloses the accessing of network device, but does not explicitly disclose "configuration information for the network device".
>
> However, Bajikar discloses "configuration information for the network device (each security zone is determined in accordance with the current location or position of mobile device and then ... a screen saver locks and reauthentication as sharing rules, automatic roaming, i.e., channel accessibility, etc., see ¶ 16).

See Office Action at p. 3. Initially, the Applicant points out that the above

characterization of Whitehill does not represent all of its deficiencies. More specifically,

not only does Whitehill not disclose "configuration information for the network device",

but Whitehill also does not disclose that location-based configuration information is

actually used for purposes of configuring the mobile device receiving it. Bajikar,

however, does not overcome these deficiencies of Whitehill.

With this in mind, the Applicant now turns to the deficiencies of Bajikar. In the

above citation, the Examiner relies for support on paragraph 16 of Bajikar, which simply

discloses that after a position of the mobile device is determined, the determined

position is used to control access to the mobile device based on a security zone

associated with the determined position. Bajikar, however, does not disclose that

location-based configuration information associated with a location of the mobile device, is actually used for purposes of configuring the mobile device receiving it.

Accordingly, the proposed combination of Whitehill and Bajikar does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-7, 9, 12-17, 19, 22-27, 29 and 31-32

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21under 35 U.S.C. § 103(a) as being unpatentable over Whitehill in view of Bajikar has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-7, 9, 12-17, 19, 22-27, 29 and 31-32 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-7, 9, 12-17, 19, 22-27, 29 and 31-32.

II.   The Proposed Combination of Whitehill, Bajikar and White Does Not Render Claims 8, 18 and 28 Unpatentable

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being anticipated by the combination of Whitehill and Bajikar has been overcome and requests that the rejection be withdrawn. Additionally, since the additional cited reference (White) does not overcome the deficiencies of Whitehill, claims 8, 18 and 28 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments. The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 8, 18 and 28.

III.   The Proposed Combination of Whitehill, Bajikar and Augart Does Not Render Claims 10, 20 and 30 Unpatentable

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being anticipated by the combination of Whitehill and Bajikar has been overcome and requests that the rejection be withdrawn. Additionally, since the additional cited reference (Augart) does not overcome the deficiencies of Whitehill, claims 10, 20 and 30 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to

be allowable based on the above arguments. The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 10, 20 and 30.

In general, the Office Action makes various statements regarding claims 1-32 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-32 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: 06-JUL-2011

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